

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	<b>ECF CASE</b>
TWP AMERICA, INC.,	: AH-3515
	:
Plaintiff,	: Case No.: 08cv7037 (DLC) (RLE)
	:
- against -	:
	:
SILVERBACK BOOKS, INC.,	:
	:
Defendant.	:
-----X	

**COMPLAINT**

Plaintiff TWP America, Inc. ("TWP America"), by its attorneys, Clyde & Co US LLP, as and for its Complaint against the defendant Silverback Books, Inc. ("Silverback"), alleges as follows:

**THE PARTIES**

1. TWP America is a domestic corporation organized and existing under the laws of New York with its principal place of business at 84 Wooster Street, New York, New York 10012.

2. Upon information and belief, Silverback is a foreign corporation organized and existing under the laws of California with its principal place of business at Silverback Books, Inc., 912 Cole Street No. 184, San Francisco, California 94117.

**JURISDICTION AND VENUE**

3. TWP America seeks recovery of \$93,728.23 for publishing services performed on behalf of Silverback, plus interest, relevant finance charges and costs pursuant to a series of contracts between them (hereinafter collectively referred to as the "Publishing Contracts").

4. The Publishing Contracts between Silverback and TWP America was governed by TWP America's Standard Conditions of Sale, a copy of which is attached hereto as Exhibit "A".

5. Pursuant to the Standard Conditions of Sale incorporated into the Publishing Contracts between TWP America and Silverback, New York law shall govern all disputes arising under the Purchasing Contracts, including those regarding their interpretation and effect. The Standard Conditions of Sale also contain a mandatory and exclusive forum selection clause requiring that all such disputes be determined by the federal and/or state courts of the State of New York.

6. Jurisdiction in this Court exists pursuant to 28 U.S.C. § 1332 in that this action is a civil action wherein the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between citizens of a State and a citizen or subject of a foreign state.

7. Venue in this Court exists pursuant to 28 U.S.C. § 1391(a)(1) and (2) in that the defendant resides in this judicial district pursuant to 28 U.S.C. §1391(c), and a substantial part of the events giving rise to this claim occurred in this judicial district.

#### **UNDERLYING FACTS**

8. Between August 2008 and October 2008, Silverback submitted several Purchase Orders for the performance of publishing services by TWP America, Inc., as follows:

<u>Purchase Order No.</u>	<u>Title</u>	<u>Date</u>
807005	1 Batter, 50 Cakes	August 24, 2007
807005	1 Noodle, 50 Sauces	August 24, 2007
807005	1 Pan, 50 muffins	August 24, 2007
807005	Coffee & Espresso	August 24, 2007
807005	Cooking for Two	August 24, 2007
807005	Fast Italian	August 24, 2007
807005	Oil & Vinegar	August 24, 2007
807005	Raclette	August 24, 2007

1007001	An Affair to Remember	October 16, 2007
1007001	Silverback Spring 2008 Catalog	October 16, 2007
1007001	Danica 2008 Spring Catalog	October 16, 2007
1007002	Product Partner Fat Burner	October 16, 2007

9. TWP agreed to perform the Publishing Services requested in the Purchase Orders and thereby entered into contracts with Silverback for the performance of the Publishing Services (the "Publishing Contracts").

10. TWP performed the Publishing Services set forth in the Publishing Contracts and shipped the requested number of copies of the work to Silverback.

11. TWP invoiced Silverback for the Publishing Services but, to date, payment for a number of invoices remains outstanding, as follows:

<u>Invoice No.</u>	<u>Date</u>	<u>Title</u>	<u>Amount</u>
429737	October 29, 2007	Coffee and Espresso	\$ 3,041.53
429738	October 26, 2007	Coffee and Espresso	\$ 2,177.60
429739	October 26, 2007	Coffee and Espresso	\$22,558.22
429873	November 9, 2007	Spring Catalog (Canadian)	\$ 3,108.00
429880	November 8, 2007	Spring Catalog (US)	\$ 1,271.15
429887	November 9, 2007	Spring Catalog (US)	\$ 2,677.75
429889	November 12, 2007	Spring Catalog (US)	\$ 1,039.10
429904	November 6, 2007	An Affair to Remember	\$15,485.00
429921	November 6, 2007	Spring Catalog (US)	\$12,126.80
430088	November 30, 2007	Fat Burner (PB)	\$25,948.50
<b>Total</b>			<b>\$89,433.65</b>

12. Payment of the invoices listed in paragraph 10 is overdue, and finance charges have accrued as follows:

<u>Invoice No.</u>	<u>Date</u>	<u>Title</u>	<u>Amount</u>
431119	March 7, 2008	Finance Charges	\$ 339.55
443134	April 3, 2008	Finance Charges	\$1,242.20
431669	May 7, 2008	Finance Charges	\$ 894.34
432010	June 4, 2008	Finance Charges	\$ 924.15
432314	July 4, 2008	Finance Charges	\$ 894.34
<b>Total</b>			<b>\$4,294.58</b>

13. While Silverback has acknowledged its debt to TWP America, Silverback failed to pay the sums due under the Publishing Contracts and, thus, owes TWP America \$93,728.23 pursuant thereto.

**AS AND FOR A FIRST CAUSE OF ACTION  
AS AGAINST SILVERBACK**

14. Silverback entered into valid Publishing Contracts with TWP America, pursuant to which it currently owes a total of \$93,728.23.

15. To date, payment has not been made by Silverback, which is in breach of the terms of the Publishing Contracts.

16. Wherefore, Silverback has breached the Publishing Contracts and TWP America is entitled to \$93,728.23 plus interest and the costs of pursuing this action, and such further relief as this court deems appropriate.


WHEREAS, plaintiff prays for damages against defendant as follows:

1. \$93,728.23 plus all pre-judgment interest accrued;
2. Reasonable attorneys' fees, costs and expenses incurred in pursuing this action to enforce the Settlement Agreement; and
3. Such other and further relief as this Court may deem proper, appropriate and just.

Dated: New York, New York  
August 7, 2008

Respectfully submitted,

CLYDE & CO US LLP

By   
Andrew J. Harakas (AH-3515)  
Barry S. Alexander (BA-3556)  
405 Lexington Avenue  
New York, New York 10174  
(212) 710-3900

Attorneys for Plaintiff  
TWP America, Inc.

To: Silverback Books, Inc.  
912 Cole Street, No. 184  
San Francisco, California 94117